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REPORT OF THE SECRETARY-GENERAL ON THE
SITUATION CONCERNING WESTERN SAHARA

1. The present report is submitted in accordance with Security Council resolution 690 (1991), by paragraph 6 of which the Council requested the Secretary-General to keep the Council regularly informed of the implementation of his settlement plan for Western Sahara. This opportunity to share with the Council my assessment of the situation is all the more welcome as I near the end of my term of office as Secretary-General.

2. It may be useful to recall the main elements of the United Nations plan as described in paragraph 47 of my report of 18 June 1990. 1/ The plan provides for a transitional period during which the United Nations will organize and conduct a referendum in the Territory to enable the people of Western Sahara to choose between independence or integration with Morocco. To this end, there is to be a cease-fire, which will mark the beginning of the transitional period, a reduction in the number of Moroccan troops in the Territory and confinement of the combatants of both sides to locations designated by my Special Representative. In order to ensure that the necessary conditions exist for the holding of a free and fair referendum, the United Nations will monitor the administration of the Territory and will ensure that any laws or regulations that might impede the holding of a free and fair referendum will be suspended as necessary. Finally, all refugees and other Western Saharans living outside the Territory who wish to return will be enabled to do so by the United Nations after their right to vote has been established.

3. On 24 May 1991, in accordance with the plan, I proposed that the cease-fire should enter into effect on 6 September 1991. Both parties accepted that date. 2/ During the following three months, it became clear that it would not be possible to complete before 6 September 1991 a number of tasks that were supposed to be completed before the cease-fire came into effect. It also became clear that, notwithstanding the parties' earlier acceptance of the plan, substantial areas of difference remained. In these circumstances one party was not able to agree that the transition period should begin on 6 September 1991, as envisaged in the plan.

4. Meanwhile, hostilities had broken out in the Territory, interrupting an informal cease-fire that had been in effect for over two years. In these inauspicious circumstances, I decided that the cease-fire should come into effect on 6 September as agreed, on the understanding that the transition period would begin as soon as the tasks referred to above had been completed. The Security Council supported my proposal that, during this delay, 100 military observers should be deployed to the Territory to verify the cease-fire and the cessation of hostilities in certain areas (S/23009). The number of military observers was subsequently increased to 200 and certain logistics and administrative support staff were also sent to the field. 3/

5. Since 6 September 1991, the headquarters of the United Nations Mission for the Referendum in Western Sahara (MINURSO) has been established in the capital, Laayoune, with three regional headquarters in the northern, central and southern sectors of the Territory. A liaison office has also been established in Tindouf with the assistance of the Government of Algeria. The 10 observation posts that the Council endorsed and that cover the main points of concern in the Territory are fully functional although some logistics and communications problems persist, mainly because of the inhospitable terrain and the climatic conditions.

6. There is no doubt that the United Nations military and civilian presence in the area has contributed significantly to a calming of the situation. No loss of life or property has been reported since the deployment of the observers. Both parties have, however, complained about violations of the cease-fire. One side has, for instance, drawn the attention of the United Nations to continual surveillance over-flights by military aircraft, while the other has complained about infiltration of troops into the Territory. In accordance with established practice, the complaints have been brought to the attention of those concerned. At the same time, I have personally urged both parties to refrain from any actions that could endanger the implementation of the plan. It is my earnest hope that restraint and serenity will prevail and that those concerned will, at all levels, honour their commitment to the settlement plan and the cause of peace.

7. It will be recalled that, in approving the settlement plan, the Security Council also accepted the timetable that I had proposed in my report of 19 April 1991. 4/ In paragraph 12 and elsewhere in that report, I indicated that the period of time allowed for the various processes were estimates that could require adjustment. Regrettably, slow progress in the accomplishment of certain tasks has already made it necessary to adjust the timetable.

8. This is largely due to the complexity of the identification process, whose purpose is to establish the list of those who would vote in the referendum. The parties have tended to interpret differently the relevant paragraphs of the plan in this regard. Despite a number of points of convergence between them, a satisfactory reconciliation of their positions has not yet been achieved. The cooperation of the parties was rightly identified in the plan as an essential condition for its successful implementation. This cooperation, while forthcoming in some areas, needs to be further strengthened in others if satisfactory progress is to be made.

9. Notwithstanding the difficulties encountered, progress has nevertheless been made in a number of areas. Most of the tasks that were to be completed before D-Day had been carried out and the necessary logistic provisions had been made by 6 September 1991. The exception lay in some parts of the identification process. The first stage of this process, consisting of the preparation by the United Nations of a revised list of the 1974 census, on the basis of information provided by the two parties, has been completed. It has not, however, proved possible to reach agreement on publication of this list in the Territory, which was to be the next stage in the process. Consultations on these matters with the parties, the tribal chiefs and others have since taken place. In my view, such consultations need to be intensified in the coming weeks with the support of the parties. Without the active assistance of the Western Saharans themselves, and notably their leaders, the United Nations cannot carry out the complex identification task in a timely and effective manner.

10. Meanwhile the general regulations governing the organization of the referendum have been promulgated and were made available to the President of the Security Council on 11 November 1991. The mandate of the Identification Commission and instructions relating to its tasks have also been finalized. These instructions are reproduced as annex I to this report. In my opinion these documents constitute a just and fair basis for the conduct of the referendum.

11. However, some differences of interpretation of the settlement plan still need to be addressed with the parties. These relate, inter alia, to the confinement of troops and the return of refugees and other Saharans living outside the Territory. While there is still time to address the former, I have personally taken up the latter question at the highest level. As is well known, a number of persons who are claimed to belong to Western Sahara have been moved into the Territory. I believe it is important that the utmost restraint be exercised at the present stage to ensure that the implementation of the settlement plan is not jeopardized by such actions. Anything that could endanger the indispensable climate of confidence should be avoided. It is clear, in any event, that only those persons who have been duly identified by the United Nations will eventually be eligible to vote in the referendum.

12. It has to be recognized, in the light of experience to date, that there is likely to be a further delay of some months while consultations continue with the parties on the above matters in order to establish the necessary conditions for implementation of the plan approved by the Security Council. The delay that has already occurred has obliged me, with great regret, to accept the resignation of my Special Representative, Mr. Johannes Manz, who is to assume his functions as his country's Permanent Observer to the United Nations, with effect from 1 January 1992.

13. During the months ahead every effort will be made to reduce costs. Those of the civilian staff working on MINURSO at Headquarters who are not required to support the consultations referred to above will be redeployed. The military elements of MINURSO that are already stationed in the Territory will

function as a military observer group, on normal United Nations lines, with the sole mandate of verifying the cease-fire and cessation of hostilities in the areas identified in my letter of 4 September 1991 to the President of the Security Council. 5/ Any personnel not required for this specific function will be returned to their national service. It may, however, be necessary to deploy some additional logistic personnel in order to ensure adequate living conditions for the military observers serving in the desert, which continues to cause me some concern.

14. I also intend to take this opportunity to clarify to the parties those acts which, in accordance with normal United Nations practice, are considered to be violations of the cease-fire and cessation of hostilities. Any persistent violations will be drawn to the attention of the Security Council.

15. I do not wish to sound unduly optimistic or leave the Council with the impression that the existing problems of interpretation and implementation are being underestimated by the United Nations. It is clear that, in the coming months, serious efforts will have to be made at the political and technical levels in order to keep the process going.

16. Finally, I wish to place on record my sincere gratitude to the members of the Security Council for the unfailing support and understanding that they have always afforded me in my efforts and from which I am certain my successor will benefit as the United Nations moves towards a just and definitive solution of the Western Sahara problem.

Notes

1/ S/21360.

2/ See S/22779.

3/ S/23044.

4/ S/22464.

5/ S/23008.

Annex

INSTRUCTIONS RELATING TO THE TASKS OF
THE IDENTIFICATION COMMISSION*

[Original: English and
French]

I. PRELIMINARY REMARKS

1. In conformity with paragraph 58 of document S/21360 and paragraph 9 of document S/22464, as well as chapter 3 of the general regulations issued by the Secretary-General on 8 November 1991, the following instructions regarding the process of identification of Saharans eligible to participate in the referendum are hereby enunciated.

2. It should be recalled that, according to the settlement plan, four essential conditions must be met to achieve the goal of holding a free, fair and impartial referendum for the Western Saharan population and to enable the United Nations Mission for the Referendum in Western Sahara (MINURSO) to carry out its responsibilities effectively and impartially: support and backing of the Security Council; full cooperation of the two parties; cooperation and support of the neighbouring countries; and the necessary financial resources. a/

II. PROVISIONS OF THE PLAN REGARDING IDENTIFICATION

3. Under the provisions of the plan, the Secretary-General is to set up, in consultation with the current Chairman of the Organization of African Unity (OAU), an identification commission responsible for carefully and scrupulously reviewing the 1974 census and updating it. b/ The plan also provides that the role of the Identification Commission will be:

(a) To review carefully the census taken in the Territory in 1974 by the Spanish authorities and update it;

(b) To calculate the real growth of the Saharan population in the period between the date of the above census and the date of organization of the referendum, taking into account the following elements:

(i) births and deaths;

(ii) movements of the Saharan population. c/

* In accordance with chapter 3 of the general regulations promulgated by the Secretary-General on 8 November 1991. Further instructions relating to the tasks of the Commission, including its procedures and method of work, will be issued later, as required.

4. On the basis of the information mentioned above, the Identification Commission will establish as precisely as possible the number of Saharans living in the Territory of Western Sahara and the number of Saharan refugees and non-residents qualified to participate in the referendum. d/

5. In respect of the identification and registration of voters, the plan provides that, under the terms of the settlement proposals, the Identification Commission will implement the agreed position of the parties that all Western Saharans counted in the 1974 census undertaken by the Spanish authorities and aged 18 or over will have the right to vote, whether currently present in the Territory or outside as refugees or for other reasons. e/

6. In its resolution 658 (1990) of 27 June 1990, the Security Council, inter alia, requested the Secretary-General to transmit to the Security Council a further detailed report, on the understanding that the further report should be the basis on which the Security Council would authorize the establishment of MINURSO (see para. 5 of resolution 658 (1990)). In paragraph 2 of his report, the Secretary-General confirmed that he had addressed the main elements of the implementation plan and added details that might be of assistance to members of the Security Council in their consideration of the recommendation regarding the establishment of MINURSO.

7. In this context, document S/22464 provides that the Identification Commission's mandate to update the 1974 census will include (a) removing from the lists the names of persons who have since died and (b) considering applications from persons who claim the right to participate in the referendum on the grounds that they are Western Saharans and were omitted from the 1974 census. It is also provided that the United Nations will ask the tribal chiefs of Western Sahara to contribute to the Identification Commission's work. f/

8. As noted in paragraph 19 of the same document, the identification and registration of all Western Saharans eligible to vote in the referendum constitute a central element in the settlement proposals. They represent also one of the most difficult tasks, as was underlined by the United Nations Visiting Mission as early as 1975, when it observed that problems would arise in determining eligibility to participate in a referendum. g/

III. SPECIFIC ASPECTS OF THE SAHARAN SOCIETY

9. The difficulties of the identification process are due, in particular, to the characteristics of the Western Saharan population, notably its nomadic tradition and the tribal structure of the society. In that respect, the above-mentioned report observed: "because of their nomadic way of life, the people of the Territory move easily across the borders to the neighbouring countries, where they are received by members of their tribes or even of their families. This ebb and flow of people across the borders of the Territory makes it difficult to take a complete census of the inhabitants of Spanish Sahara and also poses the complex problem of the identification of the

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Saharans of the Territory and makes it even more difficult to take a satisfactory census of refugees." h/

10. The Saharan society remains for the most part a society structured around tribal membership, each tribe being subdivided in fractions, subfractions, and family groups (ahels). Some of these tribes extend beyond the borders of Western Sahara. Under the heading "status of an indigenous inhabitant", the 1975 report observed that "in view of the close affinity which exists between Saharans living within the Territory and those in neighbouring countries and also of their nomadic tradition, the question of determining who is and who is not an indigenous inhabitant of the Territory is a somewhat complex matter". i/ That complexity notwithstanding, it is clear that only members of tribes whose connection with the Territory within the limits of recognized international borders is clearly established should participate in the referendum.

11. To the difficulties related to the Saharan way of life and the structure of the society, one must add those resulting from conflicts that took place in the Territory over several decades, leading a large number of Saharans to seek refuge, at different times, in neighbouring countries. In addition, other Saharans indigenous to the Territory had to leave it for economic reasons, whether to migrate as a result of drought or to seek employment in neighbouring countries.

12. In view of the above, it is clear that a comprehensive count of indigenous Saharans, including those absent from the Territory, is a complex task. It should be recalled that, according to the Spanish authorities and the representatives of Saharan political movements met in 1975 by the United Nations visiting mission, any census of indigenous persons undertaken outside the Territory would have to be based on proven membership of social and family groups (fractions and subfractions of tribes) existing within the Territory. j/

IV. SPECIFIC ASPECTS OF THE 1974 CENSUS

13. Notwithstanding the difficulties noted above, the identification of the Saharan population living in Western Sahara was undertaken by the Spanish colonial administration. In particular, it carried out in 1974 a population census, which is referred to in the settlement plan. At the end of this census, the total count of Saharans living in the Territory was 73,497. In addition, as part of its identification effort, the colonial administration issued, between 1970 and 1976, a total of 32,516 national identity documents.

14. Those national identity documents, which were the basis for the census exercise, were issued by a permanent commission composed of tribal chiefs. The criteria for determining whether or not a Saharan was indigenous to the Territory was membership in a family group (ahel) which existed in the Territory. It was pointed out to the United Nations visiting mission that "all the members of such groups are known to each other and that the authenticity of a claim to belong to a family group can be verified by the sheiks and notables of that group in consultation with their members." k/

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15. It is recognized by the parties and the tribal chiefs that the 1974 census did not include all the Saharans from the Territory. On the one hand, a number of Saharans present in the Territory, whether or not they possessed a national identity document, were not contacted by the census teams, and, on the other hand, part of the population of the Territory lived, and still lives, outside Western Sahara, for a variety of reasons. It should be recalled that, in its final communiqué, the meeting of tribal chiefs organized by the United Nations in June 1990 recognized "the imperfections and inadequacies" of the 1974 census, and "among other things the fact that many Saharans and Saharan refugees were omitted".

16. In order to carry out the role entrusted to it, the Identification Commission must review the cases of Saharans indigenous to Western Sahara who, at the time of the census, either were present in the Territory but were not counted, or were absent from the Territory, notably for the reasons mentioned in paragraph 11 above. To ensure that all eligible Saharans are given an opportunity to participate in the referendum on the future status of the Territory, the Identification Commission must, with complete impartiality, make use of all resources and expertise at its disposal, particularly the tribal chiefs and notables.

V. ROLE OF THE TRIBAL CHIEFS AND NOTABLES

17. In view of the above-mentioned characteristics of the Saharan society, one can hardly overemphasize the crucial role of the cooperation and assistance of tribal chiefs and other notables of the Territory. Their contribution is indispensable at all stages of the identification process: to assist the Commission in refining its operational procedures; 1/ to assist in the review of the written applications from people who were not counted during the 1974 census; m/ and to assist in identifying and registering voters, and in connection with the process of appeals. n/

18. With their assistance, the Commission will review applications, taking into account relevant circumstances, in an impartial and just manner, with respect to all Saharans eligible to participate in the referendum.

VI. COOPERATION OF THE PARTIES

19. Such a complex exercise can succeed only with the cooperation of the parties in a spirit of objectivity and fairness. To carry out its task, the Commission must work in an atmosphere of trust and serenity which the parties must promote. Needless to say that without their cooperation, even the most vigorous efforts by the United Nations cannot enable it to fulfil its mission, whatever the human resources and financial means put at its disposal.

VII. INSTRUCTIONS FOR THE REVIEW OF APPLICATIONS FOR
PARTICIPATION IN THE REFERENDUM

20. Taking into account all the preceding considerations, these instructions have been developed for the guidance of the Identification Commission. They take into account recognized sources such as custom, international practice, generally recognized norms as well as laws in force in the region.

21. In applying them, the Commission will bear in mind, above all, that, for actual identification, it is the membership of a family group (subfraction of a tribe) existing within the Territory, which can be attested to by the sheiks and notables of the family group, that should eventually prevail for eligibility to participate in the referendum.

22. These guidelines apply to Saharans aged 18 years or more at the closing date for inclusion in the voters' list and are drawn directly from the provisions of the plan. f/ They must be applied by the Identification Commission, in the light of the preceding paragraph and of all available information and relevant circumstances. This can be achieved only with the assistance of tribal chiefs and the support of the parties.

23. It is understood that persons whose names are included in the revised 1974 census list are eligible to participate in the referendum. It is also understood that members of the immediate family (father, mother and children) of Saharans whose name is included in the original census list or in the revised census list will, owing to this close relationship, be allowed to participate in the referendum. The relationship will be established on the basis of an individual application.

24. With regard to other applications from people who claim the right to participate in the referendum on the ground that they are Saharans and were not counted during the 1974 census, the Commission must be mindful of several considerations stemming from a concern for justice and fairness.

25. It is understood that, upon presentation of an individual application, persons who lived in the Territory as members of a Saharan tribe at the time of the 1974 census and could not be counted are eligible to vote on the same ground as people who were counted. Testimonies or documents must be submitted in support of all individual applications.

26. In order to align the treatment granted to Saharans present but not counted at the time of the 1974 census to that of people whose name is on the census list, members of the immediate family of the former group (father, mother and children) are equally eligible to vote.

27. In respect of those members of a Saharan tribe indigenous to the Territory who, for the reasons mentioned in section IV above, were absent from Western Sahara at the time of the census, it is considered that their absence from the Territory at that time cannot justify that they be automatically deprived of their right to participate in the decision regarding the future of Western Sahara.

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28. It is necessary, however, that the link with the Territory of people absent in 1974 be solid and demonstrable. To develop guidelines in that respect, the United Nations has taken into account the concerns of the parties as well as the customs of the Saharan society. For instance, it should be recalled that in 1974 the yema'a, comprising Saharan traditional authorities, adopted norms for the issuance of identity documents to Saharans. ^{o/} To the extent appropriate, these norms were also taken into consideration.

29. Firstly, it is considered that an appropriate link to the Territory exists when the applicant was born of a Saharan father born in the Territory. In that regard, consideration was given to the fact that, in 1974, Saharan tribal chiefs themselves developed a liberal norm, patterned after their own tradition. It is also appropriate to note that one of the main tasks of the United Nations has been to promote decolonization around the world. In that context, people who fled colonial rule cannot be deprived of the right to decide on the future of the Territory to which they belong. Similarly, children, aged 18 years or more, should not be penalized just because their parents, owing to colonialism or other reasons mentioned above, chose or were obliged to leave their homes. However, in order not to widen excessively the scope of this provision, it has been restricted to one generation only.

30. Secondly, taking into account current provisions regulating the acquisition of nationality in the countries of the region, it is considered that a member of a Saharan tribe belonging to the Territory is eligible to participate in the referendum if he or she has resided in the Territory for a period of six consecutive years before 1 December 1974. That figure is not arbitrary: the period of six consecutive years represents the average period of residence required under the legal systems of the countries of the region as a condition for the acquisition of nationality.

31. Lastly, as an uninterrupted period of six years might penalize those Saharans who, owing to a variety of circumstances, have had to move frequently across the borders of the Territory, it was considered necessary to provide for a condition of an intermittent residence period of 12 years prior to 1 December 1974.

VIII. CONCLUSIONS

32. The process of identification of people eligible to participate in the referendum will involve a number of proofs that applicants will have to provide in support of their claim. Official documents, well known to the Saharans and used by them, will help the Commission in making its assessment. In addition, the Commission will take into consideration the fact that in the Saharan society, oral testimonies play an important part in all social activities. Those testimonies, given under appropriate conditions, will also assist the Commission in judging the merits of individual applications.

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33. The United Nations is well aware that such a complex task as the identification of the Saharans cannot be accomplished hastily. In this regard, It is appropriate to recall the settlement plan, which states: "eligibility to vote will depend either on the presence of a person's name in the 1974 census list or on a person's ability to convince the Identification Commission that he or she is a Western Saharan who was omitted from the 1974 census. Matching individuals with names in a 17-year-old list is bound to take time. In a society that is nomadic and to a large extent illiterate and where such criteria as place of birth or residence are of limited relevance, the adjudication of applications from persons claiming to have been omitted from the 1974 list will also be time consuming. If the referendum is to be fair and impartial, in accordance with the settlement proposals, these processes cannot be rushed". p/

34. Furthermore, this process of identification can be carried out only with the complete cooperation of the parties, in a spirit of justice and objectivity. Without such cooperation and without equity and justice on the part of all concerned, particularly the tribal chiefs, the notables and the members of the ahels, the guidelines cannot, by themselves alone, enable the United Nations to fulfil in a satisfactory manner the task entrusted to it.

Notes

- a/ S/22464, para. 55.
- b/ S/21360, para. 25.
- c/ Ibid., para. 27.
- d/ Ibid., para. 28.
- e/ Ibid., para. 61.
- f/ S/22464, para. 20.
- g/ A/10023/Rev.1, annex, para. 157.
- h/ Ibid., para. 11.
- i/ Ibid., annex, para. 155.
- j/ Ibid., para. 125.
- k/ Ibid., para. 158.
- l/ S/22464, para. 20.
- m/ Ibid., para. 21.

Notes (continued)

n/ Ibid., para. 23.

o/ According to the first norm, shall be deemed Saharans "all persons born of Saharan father". See document A/10023/Rev.1, annex, para. 160.

p/ S/22464, op. cit., para. 62, subpara. (a).
